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TESTIMONY BY SANDRA YAHIRO
ADMINISTRATOR, HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
ON
HOUSE BILL NO. 252

February 2, 2015 at 2:00 p.m.

RELATING TO PHARMACY BENEFIT MANAGERS

Chairperson McKelvey and Members of the Committee:

The Hawaii Employer-Union Health Benefits Trust Fund (EUTF) did not have enough time to research and understand the impact this bill has on EUTF's prescription drug plan and the costs to the State and counties. As such, I respectfully request that the Committee defer action on this bill at this time.

Thank you for the opportunity to testify.

EUTF's Mission: We care for the health and well being of our beneficiaries by striving to provide quality benefit plans that are affordable, reliable, and meet their changing needs. We provide service that is excellent, courteous, compassionate, and informative.



LATE

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Senior Director, Government Affairs

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February 2nd, 2015

The Honorable Angus L.K. McKelvey
Chair, House Committee on Consumer Protection & Commerce
Hawaii State Capitol, 415 South Beretania Street
Honolulu, HI 96813

RE: House Bill 252--OPPOSE

Aloha Chair McKelvey, Vice Chair Woodson and members of the Committee:

CVS Health opposes HB252 as currently drafted. MAC (Maximum Allowable Cost) is a common cost management tool specifying the reimbursement limit for a particular strength and dosage of a generic prescription drug that is available from multiple manufacturers, but sold at different prices as a commodity. MAC pricing is the best system available for ensuring generic prices remain low and that payors are protected and pharmacies appropriately reimbursed. HB252, as presently drafted, poses concerns in terms of maintaining the viability of commercial MAC pricing in Hawaii. The language, however unintended, will result in negative consequences for pharmacies, payors and patients alike in its attempt to address certain challenges the bill's proponents may have with MAC. Because we do not and cannot know at what price a given pharmacy is able to purchase every prescription drug, there is no way to guarantee every MAC against all pharmacies in Hawaii without the erosion of MAC altogether.

MACs are used by both public and private payors alike to ensure that network pharmacies are neither overpaid nor underpaid and that payors and their members/beneficiaries are not overspending on generic drugs as well. It is important to note that MAC pricing is not simply a reimbursement tool used in the commercial marketplace as there are currently 45 state Medicaid programs using MAC lists, including Hawaii, saving state taxpayers millions of dollars annually.

The commoditized nature of generic drugs, with price competition among manufacturers, results in an incentive for the pharmacy owner to purchase generic drugs wisely and also provides a financial incentive to encourage generic substitution for patients when a brand name drug has a generic version available. All network pharmacies have the right to dispute the accuracy of any MAC price claim if they find that they are, in fact, unable to purchase the generic drug in question at the current MAC price reimbursement rate for a particular plan.

We thank you for your consideration of our comments and ask that the Committee defer the bill to allow time for discussion with the bill's proponents. We look forward to collaborating on a proposed HD1.

CVS Health is deeply committed to Hawaii, employing approximately 2800 colleagues in our more than 60 pharmacy and MinuteClinic locations throughout the islands of Oahu, Kauai, Maui and Hawai'i. We proudly operate as the largest pharmacy chain in Hawaii, under our Longs Drugs banner and we also offer our patients and clients a wide range of comprehensive, integrated pharmacy and health operations statewide including: Pharmacy Benefit Management (PBM) services (CVS/caremark), Specialty Pharmacy (CVS/specialty), Mail-Order and Retail Pharmacy (CVS/pharmacy/Longs Drugs), Retail Health Clinics (CVS/minute clinic) and a distribution center.

Respectfully,

Eric P. Douglas

January 31, 2015

LATE

TO: The Honorable Angus L. K. McKelvey, Chair
The Honorable Justin H. Woodson, Vice Chair
House Committee on Consumer Protection and Commerce

FR: Cynthia Laubacher, Sr. Director, Government Affairs
Express Scripts Holding Company

RE: HB 252 – Relating to Pharmacy Benefit Managers
Hearing Date: February 2, 2015 2:00pm

Express Scripts appreciates the opportunity to submit testimony regarding House Bill 252, which seeks to regulate the use of generic pricing (aka, MAC) lists used to set pharmacy reimbursement. Express Scripts manages the pharmacy benefit for over 90 million Americans.

MAC (“Maximum Allowable Cost”) lists were created by the federal government in order to bring stability to pharmacy reimbursements for generic medications. The intent of a MAC list is to incentivize pharmacies to purchase generic medications at the lowest price available, whether directly through a wholesaler, or through a buying group, known as a Pharmacy Services Agreement Organization (“PSAO”).

As currently drafted, the bill has serious unintended consequences including the potential for patients to lose access to necessary low cost medications. Realizing that was not their intent, last week we met with Representative Evans and the bill’s proponents to discuss their concerns. We would like the opportunity to work with the sponsor on a solution. Therefore, we respectfully request that decision-making be deferred on this matter in order to provide both sides time to meet. We have and are committed to participating fully in this process in the days and weeks ahead and hope we can bring the committee a new draft that meets the needs of all concerned.

Again, thank you for the opportunity to testify on this measure. We look forward to working with the bill’s sponsor and proponents to secure agreement on changes that meet everyone’s needs.



THE QUEEN'S HEALTH SYSTEMS

LATE

**HB 252, Relating to Pharmacy Benefit Managers
House Committee on Consumer Protection and Commerce
February 2, 2015, 2:00 PM**

Dear Chairman McKelvey and Members of the House Committee on Consumer Protection and Commerce:

My name is Emerick Orimoto, and I am the Director of Retail and Contract Pharmacies at the Queen's POB Pharmacies. I would like to take this opportunity to register my support for HB 252, relating to Pharmacy Benefit Managers.

Ensuring that pharmacies have access to drugs that are priced fairly will help our patients access to needed medications and will help to keep costs down throughout the health care system. I would ask for your favorable vote on this legislation. Thank you for your time and consideration of this matter.

The mission of The Queen's Health Systems is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawai'i.

LATE

February 2, 2015

The Honorable Angus L. K. McKelvey, Chair
The Honorable Justin H. Woodson, Vice Chair
House Committee on Consumer Protection and Commerce

Re: HB 252 – Relating to Pharmacy Benefit Managers

Dear Chair McKelvey, Vice Chair Woodson and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 252, which seeks to authorize pharmacy benefit managers to establish a maximum reimbursement amount (MAC) for a drug, if the drug is available in the State and at a unit price at or below the MAC. HMSA believes that there may be cause for concern with this Bill.

HMSA has a responsibility to our members to ensure they receive quality health care at reasonable costs. And, that includes the cost of prescription medications, a major cost-driver in the health care system.

We are uncertain of the objective of HB 252, but we believe there may be unintended consequences with its enactment. We especially are concerned that this Bill may result in circumstances where a pharmacy may purchase a drug from a more expensive source, when a less expensive source is available. That, ultimately, will impact our members' pocketbooks.

Given this uncertainty, we would appreciate the opportunity for further discussion on this legislation.

Thank you for the opportunity to testify on HB 252, and we hope you will consider the concern we have raised regarding this Bill.

Sincerely,



Jennifer Diesman
Vice President
Government Relations

LATE TESTIMONY

To: Honorable Representative Evans, Mckelvey, Belatti, and Creagen

From: Patrick L Adams, Hawaii Community Pharmacy Association, co-chair

Re: Maximum Allowable Cost Legislation

HB 252
FORB/SUPPORT

Dear Committee Members,

Maximum Allowable Cost (MAC) legislation is needed to help keep and improve access to Hawaii Community pharmacies. Over the years many standard databases on the cost of medications have been used to determine the price a Pharmacy Benefits Manager(PBM) would reimburse a pharmacy for the cost of a medication. The standard has changed over the last 10 years to find a database that would pay the pharmacy fairly and keep the cost as low as possible for the customer through an insurance provider. Most insurance providers concentrate their efforts on medical care and hire a third party PBM to administer the medication proportion of the insurance benefit. In essence PBMs act as insurance companies or the insurance company agents to administer the medication benefit to 80% of the Hawaii residents. In this state Caremark is the PBM for over 800,000 of the 1,200,000 Hawaii residents. It would be nearly impossible to own a pharmacy in Hawaii without having a contract with Caremark.

In the past the medication pricing standard was determined by an outside party with the PBM and the Retail pharmacies working in cooperation to abide by the national standard. This model was not very transparent on the manufacturers side on things so we began looking for a new standard. The PBMs decided that MAC should be the standard. As it stands today MAC is undefined by the state and determined solely at the PBMs discretion. PBMs are insurance companies and the agents of insurance companies that are not defined or regulated by the insurance commission or any other regulatory agency. As you can see the lack of transparency continues but it now rest on the PBM side of things. This situation has left the retail pharmacies at the mercy of the PBMs. Many PBMs own pharmacies like CVS/ Caremark and the MAC pricing has caused many pharmacies to either sell to the PBM or close their doors. Services in Hawaii are already very limited and pharmacist are beginning to help alleviate Hawaii's shortage of primary care physicians. These losses of access will continue if the predatory practices of many of the PBMs continues.

PBM practices that are limiting access:

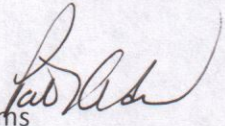
1. Failure to update the MAC prices. Many pharmacies will not carry medications that result in large losses.
2. Fines levied for failing to fill a prescription that causes a large loss in the retail pharmacy.
3. Failing to review Mac on a timely basis.
4. No retrospect payments when MAC is adjusted after a review.
5. Changing multi-source medication to single source by not accepting AB rated generics because of manufacturer rebates back to the PBM.
6. Using different MAC list for the same medication and time period to increase the spread to increase PBM payments by the providers.
7. Cost of generics is increasing 10 and 100 fold without any MAC review

8. 90% of the requested MAC reviews are not performed and of the 10% that are performed about 1% of those are adjusted and paid on. 99% are either not performed or denied when the rising cost of medications is in the news every day.

This is a very simple bill that asked very little of the PBMs. It ask that the PBM review the price that a pharmacy can buy medications and use that as a MAC price. If the MAC price is in questioned. Review and make the appropriate adjustment or take the medication off the list.

Sincerely,

Patrick L Adams

A handwritten signature in dark ink, appearing to read 'Patrick L Adams', written over the printed name.

Hawaii Community Pharmacy Association

Why is MAC such a secret?

- Essentially no two MAC lists are alike and each PBM has free reign to pick and choose products for their MAC lists and how many lists to pull from based on the pharmacy/potential client.
- Pharmacies do not have access to MAC lists or know their reimbursement until they dispense the medication.
- Typically, PBMs utilize an aggressively low MAC price list to reimburse pharmacies and a different, higher list of prices when they sell/bill to their clients or plan sponsors. Essentially, the PBMs reimburse low, charge high and keep the difference.
- PBMs use this method to obtain significant revenues by “playing the spread.”
- **“Spread”**
Using a low MAC price to reimburse a pharmacy while using a different higher price when the PBM sells/bills plan sponsors

Examples of Spread Pricing

"Express Scripts, which has since become the largest PBM in the country, projected that it would slice at least **\$763,000** from Meridian's **\$12 million** in annual drug spending. But just three months into the contract, Meridian discovered that its bills were soaring, on pace to balloon by **\$1.3 million** in 2009." –Fortune Magazine 10/10/13

"...Meridian was billed **\$92.53** for a prescription for generic amoxicillin filled at an outside pharmacy. Meanwhile, Express Scripts paid **\$26.91** to Meridian's own pharmacy to fill the same prescription. That meant a spread of **\$65.62** on one bottle of a generic antibiotic." –Fortune Magazine 10/10/13

"...the PBMs' cut of transactions can double drug costs for consumers or employers. A month's supply of a 20 milligram dose of Lipitor cost consumers or their employers **\$21.60**, according to an audit of a PBM contract... The drugstore was reimbursed **\$10.83**, so the PBM kept **\$10.77**." –USA Today 3/3/14

"At County Line Pharmacy [in Westerville, Ohio], John Komara said he's losing money on prescriptions every day. For example, Komara was recently reimbursed a total of **\$6.20** for a 30 day supply of Digoxin, a generic drug used by heart patients. Komara's cost for the drug was **\$29.69**. He filled prescriptions for Digoxin three times in a two-week period losing **\$23.49** each time." –NBC 4 Columbus 1/27/14

Source: <http://www.nbc4i.com/story/24559114/independent-pharmacies-struggling-with-increasing-generic-drug-costs>

Is there really a problem?

- 77% of pharmacists reported 26 or more instances over the past six months of a large upswing in a generic drug's acquisition price.
- 86% of pharmacists said it took the pharmacy benefit manager (PBM) or other third-party payer between two and six months to update its reimbursement rate ---- but not retroactively.
- Patients may be referred to other pharmacies because the community pharmacy could not absorb losses of \$40, \$60, \$100 or more per prescription filled, due to inadequate and/or outdated reimbursement rates.
- 84% of pharmacists said the unsustainable losses per prescription are having a "very significant" impact on their ability to remain in business to continue serving patients.
- Community pharmacies endure painfully slow MAC price updates even as rates for generic prescriptions have spiked.
- Pharmacy acquisition costs have increased as much as 600%, 1000% or more.

Source: 2014 NCPA National Survey of Retail Community Pharmacists

State MAC Transparency Legislation

State MAC Transparency Legislation

State MAC Transparency legislation:

- Sets reasonable standards on what can be MAC'ed
- Requires regular reporting of MACs to a pharmacy in a useable format
- Provides reasonable standards for how products are selected for inclusion on a MAC list
- Provides for a defined MAC appeals process

• State MAC Transparency legislation DOES NOT:

- Mandate that a PBM reimburse a pharmacy at a higher amount
- Represent "price fixing"
- Represent an administrative burden on the PBM
- Mandate that a PBM approve a pharmacies MAC appeal
- Require the release of proprietary information
- Result in increased costs to the healthcare system
- Decrease a pharmacy's ability to purchase properly
- Allow pharmacies to collectively negotiate